The answer in twenty-seven distinct paragraphs asserted the validity of the assessment and the action of the corporation by which it was established. It asserted that the complainant as a member in a mere beneficiary association was bound thereby and that no contract rights of his were affected. In many reiterated forms of statement it was asserted that the corporation was created under the laws of Massachusetts and was subject thereto and that under those laws, by which the power to make the change was to be determined, the validity of the change was beyond question. It was then alleged that the *Reynolds* suit in the courts of Massachusetts was brought by certain members and certificate holders against the corporation not only in their own behalf but as a class suit in favor of all others similarly situated and that the facts in that case were substantially identical with those presented in this. The judgment of the Supreme Judicial Court of Massachusetts maintaining the by-law and holding that the assessment was valid and binding and that no contract rights existing in favor of certificate holders were impaired by the increase of rate was explicitly referred to and in addition the twenty-seventh paragraph of the answer expressly counted on the judgment as follows:

"That the defendant Supreme Council says that the rights of the plaintiff in respect to his contract with the said defendant and his membership in the defendant order, and the changes adopted by it were and are concluded and determined by the aforesaid judgment of the Supreme Judicial Court of Massachusetts; that under the Constitution of the United States the same is entitled to full faith and credit in the State of New York, and that the complaint should be dismissed."

On the trial the proceedings and judgment in the Massachusetts court duly exemplified as required by the Act of Congress were offered in evidence and excluded

and an exception reserved. The court made what in the record are styled findings of fact but which embrace every question of law which it was conceived the controversy could possibly involve. The court held that the complainant was not barred by laches in consequence of his having accepted the amendment to the rates made in 1898, and that as he had protested in making the payments during the four years as to the rates fixed under the amendment of 1905, he was not estopped from questioning the validity of that amendment. It was decided that under the law of New York as a certificate holder the complainant had a contract which entitled him to prevent any increase of rate over that established in 1898. So far as the law of Massachusetts was concerned it was declared that although it was governed by that law, the assessment would be valid, as the complainant was a member of a subordinate council existing in New York and doing business there, the rights of its members were controlled by the New York law wholly irrespective of the law of Massachusetts. The rights asserted by the complainant were adjudged to exist and the relief prayed for was granted.

The case then went to the Appellate Division of the Second Department. The court considering the character of the corporation, the provisions of its constitution and by-laws and the powers which they conferred on the corporation, as well as the application for membership and the certificate issued pursuant thereto, decided that the amendment as to rates was not *ultra vires* of the corporation but on the contrary was within its powers and violated no contract rights of the complainant. Without deciding whether the case was controlled by the law of Massachusetts, and without passing upon the action of the trial court in seemingly rejecting the offer of the Massachusetts judgment, the court, treating that judgment as before it and considering besides the Massachusetts law as open

for its consideration, held that the law of that State and the judgment there rendered served additionally to sustain the view taken as to the significance of the constitution and by-laws of the order and thus served additionally to demonstrate that error had been committed by the trial court in holding that under the law of New York there was a right to relief. 144 App. Div. (N. Y.) 761. The case then went to the Court of Appeals where the judgment of the Appellate Division was reversed and that of the trial court affirmed on the ground that the law of New York governed and established under the circumstances disclosed the right of the complainant to the relief which had been awarded him. 206 N. Y. 591.

It is not disputable that, disregarding details, all the rights asserted under the assignments of error come to one contention, that a violation of the full faith and credit clause of the Constitution of the United States resulted from refusing to hold that the rights of the parties were to be determined by the Massachusetts law and to apply that law, and in further refusing to give due effect to the decree rendered in Massachusetts concerning the subject of the controversy.

By a motion to dismiss it is urged that this question is not open for consideration because it was not raised below. But, as we have seen, the fact that the charter was a Massachusetts charter and the controlling character of the laws of that State on its operation and effect were asserted by way of defense over and over again in the pleadings. It is, indeed, true that in none of the averments concerning the duty to apply the Massachusetts law and the validity under that law of the provision of the constitutions and by-laws which was assailed was any express reference made to the full faith and credit clause of the Constitution of the United States, but this was not the case as to the Massachusetts judgment which was expressly pleaded, accompanied with an explicit averment that not

to give it due effect would be a violation of the full faith and credit clause of the Constitution of the United States. And as what was the due effect to be given to the judgment depended, as we shall hereafter more particularly point out, upon whether the Massachusetts law controlled the parties, since if it did, the judgment would be entitled to one effect, and if it did not, to another effect, it follows that the claim as to constitutional right concerning the judgment also involved deciding whether the Massachusetts law controlled. It follows that in both aspects the claim of full faith and credit under the Constitution of the United States was asserted, and whether the court below erred in holding that that clause was inapplicable because the contract was a New York contract governed by New York law is the question for decision. And the solution of that question involves two considerations: first, was the controversy to be determined with reference to the Massachusetts charter and laws and judgment; and second, if yes, did they sustain the right of the corporation to make the increased assessment complained of?

Before coming to consider the subject in its first aspect as controlled by authority, we briefly contemplate it from the light of principle in order that the appositeness of the authorities which are controlling may be more readily appreciated.

It is not disputable that the corporation was exclusively of a fraternal and beneficiary character and that all the rights of the complainant concerning the assessment to be paid to provide for the Widows' and Orphans' Benefit Fund had their source in the constitution and by-laws and therefore their validity could be alone ascertained by a consideration of the constitution and by-laws. This being true, it necessarily follows that resort to the constitution and by-laws was essential unless it can be said that the rights in controversy were to be fixed by disregarding the source from which they arose and by putting out of view

the only considerations by which their scope could be ascertained. Moreover, as the charter was a Massachusetts charter and the constitution and by-laws were a part thereof, adopted in Massachusetts, having no other sanction than the laws of that State, it follows by the same token that those laws were integrally and necessarily the criterion to be resorted to for the purpose of ascertaining the significance of the constitution and by-laws. Indeed, the accuracy of this conclusion is irresistibly manifested by considering the intrinsic relation between each and all the members concerning their duty to pay assessments and the resulting indivisible unity between them in the fund from which their rights were to be enjoyed. The contradiction in terms is apparent which would rise from holding on the one hand that there was a collective and unified standard of duty and obligation on the part of the members themselves and the corporation, and saying on the other hand that the duty of members was to be tested isolatedly and individually by resorting not to one source of authority applicable to all but by applying many divergent, variable and conflicting criteria. In fact their destructive effect has long since been recognized. *Gaines* v. *Supreme Council of the Royal Arcanum*, 140 Fed. Rep. 978; *Royal Arcanum* v. *Brashears*, 89 Maryland, 624. And from this it is certain that when reduced to their last analysis the contentions relied upon in effect destroy the rights which they are advanced to support, since an assessment which was one thing in one State and another in another, and a fund which was distributed by one rule in one State and by a different rule somewhere else, would in practical effect amount to no assessment and no substantial sum to be distributed. It was doubtless not only a recognition of the inherent unsoundness of the proposition here relied upon, but the manifest impossibility of its enforcement which has led courts of last resort of so many States in passing on questions involving the general authority of

fraternal associations and their duties as to subjects of a general character concerning all their members to recognize the charter of the corporation and the laws of the State under which it was granted as the test and measure to be applied. *Supreme Lodge* v. *Hines*, 82 Connecticut, 315; *Supreme Colony* v. *Towne*, 87 Connecticut, 644; *Palmer* v. *Welch*, 132 Illinois, 141; *Grimme* v. *Grimme*, 198 Illinois, 265; *American Legion of Honor* v. *Green*, 71 Maryland, 263; *Royal Arcanum* v. *Brashears*, 89 Maryland, 624; *Golden Cross* v. *Merrick*, 165 Massachusetts, 421; *Gibson* v. *United Friends*, 168 Massachusetts, 391; *Larkin* v. *Knights of Columbus*, 188 Massachusetts, 22; *Supreme Lodge* v. *Nairn*, 60 Michigan, 44; *Tepper* v. *Royal Arcanum*, 59 N. J. Eq. 321; *S. C.*, 61 N. J. Eq. 638; *Bockover* v. *Life Association*, 77 Virginia, 85. In fact, while dealing with various forms of controversy, in substance all these cases come at last to the principle so admirably stated by Chief Justice Marshall more than a hundred years ago (*Head* v. *Providence Insurance Co.*, 2 Cranch, 127, 167) as follows:

"Without ascribing to this body, which, in its corporate capacity, is the mere creature of the act to which it owes its existence, all the qualities and disabilities annexed by the common law to ancient institutions of this sort, it may correctly be said to be precisely what the incorporating act has made it, to derive all its powers from that act, and to be capable of exerting its faculties only in the manner which that act authorizes. To this source of its being, then, we must recur to ascertain its powers. . . ."

In addition it was by the application of the same principle that a line of decisions in this court came to establish: first, that the law of the State by which a corporation is created governs in enforcing the liability of a stockholder as a member of such corporation to pay the stock subscription which he agreed to make; second, that the state law and proceedings are binding as to the ascertaining of

the fact of insolvency and of the amount due the creditors entitled to be paid from the subscription when collected; and third, that putting out of view the right of the person against whom a liability for a stockholder's subscription is asserted to show that he is not a stockholder, or is not the holder of as many shares as is alleged, or has a claim against the corporation which at law or equity he is entitled to set off against the corporation, or has any other defense personal to himself, a decree against the corporation in a suit brought against it under the state law for the purpose of ascertaining its insolvency, compelling its liquidation, collecting sums due by stockholders for subscriptions to stock and paying the debts of the corporation, in so far as it determines these general matters, binds the stockholder, although he be not a party in a personal sense, because by virtue of his subscription to stock there was conferred on the corporation the authority to stand in judgment for the subscriber as to such general questions. *Selig* v. *Hamilton*, 234 U. S. 652; *Converse* v. *Hamilton*, 224 U. S. 243; *Bernheimer* v. *Converse*, 206 U. S. 516; *Whitman* v. *National Bank*, 176 U. S. 559; *Hawkins* v. *Glenn*, 131 U. S. 319.

That the doctrines thus established if applicable here are conclusive is beyond dispute. That they are applicable clearly results from the fact that although the issues here presented as to things which are accidental are different from those which were presented in the cases referred to, as to every essential consideration involved the cases are the same and the controversy here presented is and has been therefore long since foreclosed.

The controlling effect of the law of Massachusetts being thus established and the error committed by the court below in declining to give effect to that law and in thereby disregarding the demands of the full faith and credit clause being determined, we come to consider whether the increase of assessment which was complained of was within

the powers granted by the Massachusetts charter or conflicted with the laws of that State. Before doing so, however, we observe that the settled principles which we have applied in determining whether the controversy was governed by the Massachusetts law clearly make manifest how inseparably what constitutes the giving of full faith and credit to the Massachusetts judgment is involved in the consideration of the application of the laws of that State and therefore, as we have previously stated, how necessarily the express assertion of the existence of a right under the Constitution of the United States to full faith and credit as to the judgment was the exact equivalent of the assertion of a claim of right under the Constitution of the United States to the application of the laws of the State of Massachusetts. We say this because if the laws of Massachusetts were not applicable, the full faith and credit due to the judgment would require only its enforcement to the extent that it constituted the thing adjudged as between the parties to the record in the ordinary sense, and on the other hand, if the Massachusetts law applies, the full faith and credit due to the judgment additionally exacts that the right of the corporation to stand in judgment as to all members as to controversies concerning the power and duty to levy assessments must be recognized, the duty to give effect to the judgment in such case being substantially the same as the duty to enforce the judgment.

Additionally, before coming to dispose of the final question it is necessary to say that in considering it in view of the fact that the Appellate Division treated the Massachusetts judgment as in the record and considered it, and that the court below made no reference to its technical inadmissibility, but on the contrary treated the question as being one not of admissibility but of merits, we shall pursue the same course and treat the judgment as in the record upon the hypothesis that the action of the trial

court did not amount to its technical exclusion but only to a ruling that as it deemed the law of Massachusetts inapplicable it so considered the judgment, and therefore held it merely irrelevant to the merits.

Coming then to give full faith and credit to the Massachusetts charter of the corporation and to the laws of that State to determine the powers of the corporation and the rights and duties of its members, there is no room for doubt that the amendment to the by-laws was valid if we accept, as we do, the significance of the charter and of the Massachusetts law applicable to it as announced by the Supreme Judicial Court of Massachusetts in the *Reynolds Case*. And this conclusion does not require us to consider whether the judgment *per se* as between the parties, was not conclusive in view of the fact that the corporation for the purposes of the controversy as to assessments was the representative of the members. (See *Hartford Life Ins. Co.* v. *Ibs*, this day decided, *post*, 662.) Into that subject therefore we do not enter.

Before making the order of reversal we regret that we must say something more. The printed argument for the defendant in error is so full of vituperative, unwarranted and impertinent expressions as to opposing counsel that we feel we cannot, having due regard to the respect we entertain for the profession, permit the brief to pass unrebuked or to remain upon our files and thus preserve the evidence of the forgetfulness by one of the members of this bar of his obvious duty. Indeed, we should have noticed the matter at once when it came to our attention after the argument of the case had we not feared that by doing so delay in the examination of the case and possible detriment to the parties would result. Following the precedent established in *Green* v. *Elbert*, 137 U. S. 615, which we hope we may not again have occasion to apply, the brief of the defendant in error is ordered to be stricken from the files and the decree below in accordance with the

views which we have expressed will be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.